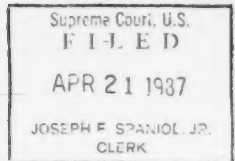


EDITOR'S NOTE

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REPLY BRIEF



IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1986

ANDREW J. WOODRICK,
Petitioner

VS.

CAPTAIN PETER B. HUNGERFORD,
ET. AL., Respondents

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NO. 86-849

MOTION TO DISMISS
BRIEF FOR THE RESPONDENTS IN OPPOSITION
DUE TO DISSIMULATION

TO THE HONORABLE, THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME
COURT OF THE UNITED STATES:

Petitioner moves the court to dismiss respondents' brief in opposition to a petition
for certiorari on grounds of dissimulation.

Respondents have gone outside the record into matters that need to be correctly
stated.

First, respondents state the petitioner has a cognizable claim under Article 138,
Uniform Code of Military Justice (Resp. Brief 7). This brief was the first petitioner
was aware of such an assertion. After tossing the complaint of wrong from one general
court-martial authority to another (Exhibit 1), the Air Force held the complaint was
not cognizable (Exhibit 2).

Second, respondents assert that petitioner never asked the U.S. District Court
to intervene in his court-martial (Resp. Brief 9). This position is contrary to the position
of respondents' answer to show cause (p. 14 n. 5) before the U.S. Court of Military Appeals
(Exhibit 3), whereby respondents stated:

In this respect, we think the Court of Appeals was
clearly wrong in suggesting that Councilman did not
apply in the federal action because petitioner did not
seek intervention in his court-martial. Clearly, he did
seek such intervention by moving to enjoin his court-martial.

Third, respondents assert that petitioner has sought relief before the Air Force Board for Correction of Military Records. Interestingly, the government's advisory opinion to the board recommended denial and never once discussed the merits of the misrepresentation claim.

Respectfully submitted,

THE LAW OFFICES OF JOHN M. ECONOMIDY
Kelly Field Bank Tower
6100 Bandera, Suite 508
San Antonio, Texas 78238-1601
(512) 521-7843

John M. Economy
JOHN M. ECONOMIDY
Attorney for Petitioner
State Bar of Texas No. 06404500

3 Atchs

1. Ex. 1, 12 AF/JA Ltr, 5 Jan 87
2. Ex. 2, ATC/CC Ltr, 3 Feb 87
3. Ex. 3, Respondents Answer to USCMA

Certificate of Service

I, John M. Economy, counsel of record for petitioner Andrew J. Woodrick, and a member of the Bar of the Supreme Court of the United States, hereby certify that, on the 20th day of April 1987, I served three copies of the above motion to dismiss on each of the several parties thereto, as follows:

1. On the United States, by mailing three copies in a duly addressed envelope, with first class postage prepaid to the Solicitor General, Department of Justice, Washington, D.C. 20530.

2. On the Department of the Air Force, by mailing three copies in a duly addressed envelope, with first class postage, prepaid, to counsel for respondents, General Litigation Division, HQ USAF/JACL, The Pentagon, Room 5E425, Washington, D.C. 20330-5130.

Respectfully submitted,

THE LAW OFFICES OF JOHN M. ECONOMIDY
Kelly Field Bank Tower
6100 Bandera, Suite 508
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John M. Economy
JOHN M. ECONOMIDY
Attorney for Petitioner
State Bar of Texas No. 06404500



DEPARTMENT OF THE AIR FORCE

HEADQUARTERS TWELFTH AIR FORCE (TAC)
BERGSTROM AIR FORCE BASE TX 78743 5002

REPLY TO
ATTN OF JA

5 January 1987

SUBJECT Complaint of Wrong Under Article 138, UCMJ

TO 3708 BMTS (AIC Andrew J. Woodrich)
Lackland AFB TX 78236-5000

1. Your complaint was received at this Headquarters on 5 January 1987.
2. Although your case has been transferred to this Headquarters for purposes of court-martial jurisdiction, General Cunningham does not exercise general court-martial jurisdiction over your commander. As Article 138, UCMJ, requires that the complaint be forwarded to the commander exercising general court-martial jurisdiction over the commander who allegedly committed the wrong, your complaint has been forwarded to the Staff Judge Advocate, Air Training Command, for appropriate disposition.
3. Any further correspondence concerning your complaint should be addressed to HQ ATC/JA, Randolph AFB TX 78148-5000.

FOR THE COMMANDER

Ludolf R. Kunnell III
LUDOLF R. KUNNEL III
Colonel, USAF
Staff Judge Advocate

cc: HQ USAF/JACD
Lackland AFB TX
HQ ATC/JA w/Atch
Randolph AFB TX

Readiness is our Profession



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS AIR TRAINING COMMAND (ATC)
RANDOLPH AIR FORCE BASE TX 78150 5001

3 FEB 1987

REPLY TO
ATTN OF

CC

SUBJECT Complaint of Wrong Under Article 138, UCMJ

to AB Andrew J. Woodrick
3708 BMTS
Lackland AFB TX 78236-5000

1. The complaint of wrong which you filed with the Commander, 12th Air Force, has been forwarded to me for action. I have carefully reviewed your request for discharge, your commander's action on your request, and the background documentation you submitted with your complaint.
2. AFR 110-19 governs the processing of Article 138 complaints. Paragraph 2a of that regulation provides that "except for complaints that involve pre-trial and post-trial confinement, complaints relating to military discipline . . . are not cognizable as Article 138 complaints under this regulation." Although your redress of grievance requested discharge under AFR 39-10, the basic issue underlying your complaint concerns whether you are presently subject to military jurisdiction. This entire issue will be resolved within the framework of the military judicial system. Since the subject matter of your complaint is already under consideration within the military judicial system, you must look to that channel for resolution of your complaint. This channel will afford you proper measures for redressing the wrong of which you complain.

3. This decision constitutes final action on your complaint.

John A. Shaud
JOHN A. SHAUD
Lieutenant General, USAF
Commander

cc: HQ USAF/JACM

AIR FORCE—A GREAT WAY OF LIFE

Lest there be any misunderstanding, we do not cite Councilman to suggest that this Court is without authority to act in petitioner's court-martial case through the extraordinary writ power. Rather, we cite Councilman to illustrate two general propositions as they relate to the posture of petitioner's federal civil court action vis-a-vis his court-martial. First, military courts are entitled to deference and comity by federal courts to the same extent as are state courts. Second, military courts are capable of and responsible for resolving factual and legal issues, especially those issues relating to the extent of their own jurisdiction. These concepts are important because when petitioner was charged with desertion by the military authorities his contractual dispute, which at that point had not been brought to the federal courts' attention, lost whatever civil character it had and became wholly military in nature. His suit for habeas relief and a temporary restraining order in federal court, filed after the charge of desertion was preferred and acted upon by the convening authority unquestionably constituted a collateral attack on the jurisdiction of the military court, a situation to which Councilman specifically applies, and which Councilman prohibits save in very specific exceptions.⁵

→ ⁵In this respect we think the Court of Appeals was clearly wrong in suggesting that Councilman did not apply in the federal action because petitioner did not seek intervention in his court-martial. Clearly, he did seek such intervention by moving to enjoin his court-martial. While the Air Force's agreement to stay the proceedings temporarily mooted the request for a temporary restraining order, it is clear that the stay would not have been imposed had it not been for petitioner's attempt to have the District Court intervene in the court-martial.